

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – OCTOBER 15, 2003**

**CALL TO ORDER**

Mayor/Chairperson Kennedy called the special meeting to order at 5:05 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Chang, Sellers and Mayor/Chairman Kennedy  
Late: Council/Agency Members Carr, Tate (arrived for closed session).

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

City Attorney/Agency Counsel Leichter announced the following closed session items.

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)  
Number of Potential Cases: 4

**2.**

**EXISTING LITIGATION**

Authority: Government Code Section 54956.9(a)  
Case Name: Oregon Mutual v. Morgan Hill Unified School District et al.  
Case No.: Santa Clara County Superior Court #1-03 CV 005398

**3.**

**EXISTING LITIGATION**

Authority: Government Code Section 54956.9(a)  
Case Name: City of Morgan Hill et al. v. Hearing Board of the Bay Area Air Quality Management District, et al  
Case Number: AO 102518, Court of Appeal of the State of California First Appellate District

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 5:07 p.m.

## **RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:03 p.m.

## **CLOSED SESSION ANNOUNCEMENT**

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session with the exception of the authority given to defend in the case of *Oregon Mutual v. Morgan Hill Unified School District et. al.*

## **SILENT INVOCATION**

## **PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairman Kennedy, Alex Kennett, past president of Independence Day Inc., led the Pledge of Allegiance.

## **PRESENTATIONS**

Chief of Police Galvin indicated that neither officer were in attendance this evening to receive their commendations.

Mayor Kennedy read Certificates of Commendation for Officers Erin McNish and Gary Smith for performance above and beyond the call of duty in the rescue of a woman from a burning building located on Warren Avenue.

Alex Kennett indicated that he is the City's elected representative to the Santa Clara County Open Space Authority, District 1. He introduced Patrick Congdon, Manager of the Open Space Authority. He presented a power point presentation on the overview of who/what the Open Space Authority is/does. He indicated that the Open Space Authority was created in 1993 by an act of the State legislature in response to efforts by students in local government who felt that there was a need for the acquisition of open space by means of easements or purchase of land in order to keep lands in open space in perpetuity. In place, is a citizens advisory committee consisting of volunteers from all walks of life who are appointed by the board and provide public input/channel of communication to the board; fostering a positive public image and helping educate the public about the goals of the Open Space Authority. The Open Space Authority has been broken into study areas and uses a guideline for land acquisition as lands become available. He said that there are three study areas around Morgan Hill that affect the city directly. He indicated that approximately 10,000 acres have been reserved as open space in perpetuity. He clarified that funding is based on an assessment that is placed on each residential unit with the current rate ranging from \$12 to \$32 per residential unit and is proportionate with larger units and commercial units. He stated that the Open Space Authority tries to use grant funding whenever possible, coordinating with other agencies such as the Santa Clara Land Trust, Nature Conservancy, Sierra Club and other organizations to help attain funding. He indicated that the Open Space Authority always pays individuals based on fair market/appraised value.

Mayor Kennedy inquired whether there was a criterion that favors lands close to population centers to achieve easier access. He referred to El Toro, indicating that it can be accessed by trails that are semi private and private. He said that it is difficult to get public access to some of the lands closed in.

Mr. Kennett indicated that the Open Space Authority is a public agency and that public monies are used to buy public land, whenever possible. He said that urban open space is a factor in the land selection criterion.

Patrick Congdon said that the criteria established for land acquisition is found in the Open Space Authority's five year plan. He knows that El Toro has been on the City's list for some time as a participating jurisdiction. Within the Santa Clara County 2020 Task Force Report, it lists the 30 highest ranked areas in the County for acquisition. Priorities are given to areas that are considered as top priorities to multi jurisdictions. He said that the Open Space Authority established specific goals for land acquisition. He stated that the 20% funding program is a great program as it gives something back to those individuals who pay into an assessment. He said that by giving back a percentage of what is collected; it goes to the participating jurisdiction to use within the city and directly benefits its residents. He encouraged the City of Morgan Hill and other participating jurisdictions to use the program.

Mayor Kennedy requested a copy of the criteria used for land acquisition. He encouraged members of the community who would like to advocate or push for more open space in Morgan Hill to work toward this goal.

### **ANNOUNCEMENTS**

Mayor Kennedy announced an Evening of the Arts to be held on Tuesday, October 21, 2003 at the Community and Cultural Center from 5-8 p.m.

Recreation and Community Services Manager Spier invited the public to a free public session to be held at the Community and Cultural Center. She indicated that this event is co-hosted by the Morgan Hill Community Foundation and the City of Morgan Hill. An open house will be held on Tuesday, October 21 from 5-8 p.m., featuring performing artists from the Morgan Hill area to bring cultural diversity to the playhouse, community center and amphitheater. She said that the day will begin with a community grant workshop hosted by the Arts Council of Silicon Valley and the Community Foundation of Silicon Valley from 10 a.m. – 4 p.m.

### **CITY COUNCIL REPORT**

Mayor Kennedy stated that one of the agencies that he serves on is the Santa Clara County Cities Association Board of Directors. He said that at its last meeting, the Board elected Mayor Pro Tempore Chang to serve as the Secretary/Treasurer, serving as an officer on the executive board. He congratulated Mayor Pro Tempore Chang on this appointment. He said that later on in the agenda, there will be discussion relating to some bylaw changes to this organization.

## **CITY MANAGER REPORT**

City Manager Tewes updated the Council on budgetary matters. He said that there was a recent election held in the State of California. As a result of this election, there is a lot of anticipation for change. He stated that some of these changes will affect the City's ability to deliver quality community services in Morgan Hill. He indicated that the City is in the middle of a series of budget challenges that are caused by: 1) the local economy; 2) the state economy; and 3) policy decisions that are made at the state level. He said that it is important for the community to understand that the state legislature and the governor, through laws, determine how much of a community's revenue will support public safety services. One such revenue is the car tax, the motor vehicle license (MVL) fees. He said that there is a lot of anxiety about how this issue will be addressed since the revenues from the MVL fees are distributed to cities and counties to pay for public safety services. He said that staff will be watching this. He said that the state legislature and the governor determine the allocation of local property taxes based on Proposition 13. From time to time, monies are shifted, resulting in the loss of revenues to the Redevelopment Agency due to the reallocation of funds. He indicated that cities and counties receive 1% of retail transactions pursuant to state law. He said that there has been some discussion about changing the allocation formula.

City Manager Tewes indicated that agenda item 17 presents the Council with a monthly report on the City's expenditures and revenues. The monthly report shows that City revenues often lag by as much as 3-6 months the actual underlying economic activity that generated the revenue. He said that staff is reporting sales tax receipts based on economic activity of more than 90 days ago. He reported that these results are discouraging. He said that for the past 10 quarters, the City has seen a reduction in sales tax receipts. Based on the most recent data, it is clear that the City will need to revise downward its estimates of sales tax for the current fiscal year. When the Council adopted the fiscal year budget, it included reductions of many city services. The Council gave staff the direction to try and avoid any severe impacts to the community. He said that it was his belief that each and every city service that is financed by the general fund has seen some level of impacts. Staff continues to have a modified hiring freeze to moderate cost increases. He said that with this data, staff will be preparing updates to the City's five year financial forecast, presenting this to the Council in its annual goal setting session at the beginning of the next calendar year. He stated that it was important to note that the community started the fiscal year with a strong financial reserve but that the local economy has not generated enough revenue to support the level of services that the community has come to enjoy. Therefore, the City needs to consider a long term strategy on how to deploy these reserves and bring the City's spending patterns into alignment with long term revenues.

## **CITY ATTORNEY REPORT**

City Attorney Leichter stated that the Monthly Litigation Summary Report was before the Council, noting that there is the addition of one case, in Case No. 2 - Oregon Mutual Insurance Company v. the City of Morgan Hill. She said that this is the case that the Council discussed in closed session and is an out growth of the fuel tank leak of the Mintor and Fahey case.

## **OTHER REPORTS**

None were identified.

## **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comment for items not listed on this evening's agenda.

Brian Conry, Executive Director of the American Institute of Mathematics, invited the public to attend a special event that will be held on Tuesday, November 25, 2003, 7:00 p.m. in the Community Playhouse. He indicated that John Allen Paulos, a well known author and professor of mathematics from Temple University, will be giving a talk on *A Mathematician Reads the Newspaper*. He indicated that tickets are available at Booksmart and that free tickets are available to school groups and other groups. He stated that all proceeds from ticket sales will be donated to Math Counts to help this program get started in Morgan Hill.

Virginia Sellers, Manager of the Morgan Hill Certified Farmers Market, announced that the Farmers Market will be in operation year round at Third and Depot every Saturday from 9 a.m. – 1 p.m.

No further comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Kennedy pulled items 5 and 10 from the Consent Calendar.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-4, 6-9, and 11-17, as follows:*

1.        **RESOLUTION TO AUTHORIZE THE CITY MANAGER TO APPLY FOR DISASTER ASSISTANCE FUNDS FROM STATE OFFICE OF EMERGENCY SERVICE (OES) WHEN APPROPRIATE UNDER STATE DISASTER ASSISTANCE REGULATIONS**

**Action:** **Adopted** *Resolution No. 5723, Authorizing the City Manager to Apply for Disaster Assistance Funds from the State in the Event of Future Disasters Affecting the City of Morgan Hill.*

2.        **MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF MORGAN HILL AND SANTA CLARA COUNTY FOR CERTAIN PROGRAM FUNDS FOR EMERGENCY PREPAREDNESS**

**Action:** **Authorized** *the City Manager to Execute a Memorandum of Understanding Between the City of Morgan Hill and the County of Santa Clara for the Administration of Certain Pass-Through Funds for Emergency Preparedness.*

3. **AQUATICS CENTER PROJECT – SEPTEMBER CONSTRUCTION PROGRESS REPORT**  
*Action: Information Only.*
4. **REPLACEMENT PURCHASE OF POLICE VEHICLE**  
*Action: Authorized Vehicle Purchase Through the State of California General Services Procurement Process for the Vehicle Identified in Staff Report For a Total Cost of \$31,668.00.*
6. **AWARD OF CONTRACT FOR PARADISE PARK IMPROVEMENT PROJECT**  
*Action: 1) Awarded Contract to Sanchez Grading General Contractor in the Amount of \$163,974 for Construction of Paradise Park Improvements; and 2) Authorized a \$12,000 Construction Contingency.*
7. **APPROVAL OF SUBDIVISION IMPROVEMENT AGREEMENT WITH MORGAN HILL LAND, L.L.C. – CONDIT ROAD (APN 728-17-019)**  
*Action: 1) Approved the Subdivision Improvement Agreement; and 2) Authorized the City Manager to Sign the Agreement on Behalf of the City with Morgan Hill Land, L.L.C., Condit Road (APN 728-17-019).*
8. **ACCEPTANCE OF BUTTERFIELD BOULEVARD SEWER TRUNK PROJECT**  
*Action: 1) Accepted as Complete the Butterfield Boulevard Sewer Trunk Project in the Final Amount of \$320,210.23; and 2) Directed the City Clerk to File the Notice of Completion with the County Recorder's Office.*
9. **ACCEPTANCE OF FISCAL YEAR 2001-2002 TRAFFIC SIGNALIZATION PROJECT**  
*Action: 1) Accepted as Complete the 2001-2002 Traffic Signalization Project in the Final Amount of \$496,494.75; and 2) Directed the City Clerk to File the Notice of Completion with the County Recorder's Office.*
11. **STATUS OF GOALS ADOPTED BY THE CITY COUNCIL ON FEBRUARY 26, 2003**  
*Action(s): 1) Accepted Report on the Status of Goals Adopted by the City Council on February 26, 2003; and 2) Directed Staff to Report Back on Implementation Status in January 2004.*
12. **UPDATE ON DEVELOPMENT PROCESSING SERVICES STUDY IMPLEMENTATION**  
*Action(s): 1) Accepted Report on the Implementation Status of Development Processing Services Study Recommendations; and 2) Directed staff to Report Back on Implementation Status in April 2004.*
13. **EMERGENCY AUTHORIZATION FOR ROADWAY REPAIR AND RESURFACING OF EAST DUNNE AVENUE**  
*Action(s): 1) Adopted Resolution No. 5724, Declaring the Need for This Emergency Expenditure; and 2) Approved Expenditure Not-to-Exceed \$100,000 for Emergency Roadway Repair and Resurfacing of East Dunne Avenue from Holiday Drive to the East City Limit.*

**14. ADOPT ORDINANCE NO. 1637, NEW SERIES**

**Action:** *Waived the Reading, and Adopted Ordinance No. 1637, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-03-07: CENTRAL-CENTRAL PARK (APN 726-27-104 & 105).***

**15. ADOPT ORDINANCE NO. 1638, NEW SERIES**

**Action:** *Waived the Reading, and Adopted Ordinance No. 1638, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 03-08 FOR APPLICATION MP 02-24: SUNNYSIDE-QUAIL CREEK (APN 767-29-006).***

**16. SPECIAL CITY COUNCIL MEETING MINUTES FOR SEPTEMBER 24, 2003**

**Action:** *Approved the Minutes as Written.*

**17. SEPTEMBER 2003 FINANCE AND INVESTMENT REPORT**

**Action:** *Accepted and Filed Report.*

**5. APPOINTMENT OF SUBCOMMITTEE FOR ETHICS WORKSHOP**

Mayor Kennedy indicated that he would be interested in serving on this subcommittee and that it was his understanding that Council Member Tate would be interested in serving on this subcommittee as well.

City Attorney Leichter requested that the Council appoint a subcommittee to work with her on developing an agenda and presentation for the scheduled November 11 workshop relating to ethics and other topics.

**Action:** *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (5-0) Ratified Mayor Kennedy's Appointment of Council Member Tate and his appointment to Work with City Attorney on Agenda for Substance of Ethics Workshop to be Held on November 11, 2003.*

**10. UPDATE OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (MEASURE P)**

City Manager Tewes said that for a couple of weeks, the City has been advertising in its city-wide newsletter that October 15 would be the day on which the City Council would be considering proposals to update the Residential Development Control System (Measure P). He stated that for more than a year a citizens task force, Planning Commission and City Council have been working through a series of proposals to update Measure P. He indicated that staff felt that action needed to be taken this evening due to deadlines established by the County Registrar of Voters. However, staff now understands that the City has a few more weeks to conclude its review of the proposed ballot measure. He informed the public that the Council's discussion on the update to Measure P will be held on November 5, 2003.

Council Member Sellers felt that it would be appropriate for the Council to receive testimony this evening from individuals who wish to address the Council and could not attend the November 5 meeting. He requested that the Council ask staff to go back and give a briefing to the Downtown Committee, taking advantage of this time to provide a public briefing. He felt that getting the details out on the proposed amendments may go a long way toward answering a lot of the questions that might arise at a later date.

Mayor Kennedy opened the floor to public comment.

Bruce Tichinin presented the Council with what he felt would be a historic opportunity to tie the acquisition of a greenbelt around Morgan Hill to future growth under Measure P. He felt that future growth anticipated under Measure P can be used as a means to partially fund the acquisition of conservation easements for land immediately around Morgan Hill and designate it as desired open space on a permanent basis. He stated that he represents his own interests and that of his clients; Salvatorio and James DiVittorio who own 20-acres of land near the intersection of Murphy and Tennant Avenue, east of Highway 101. He informed the City Council that the property owners are interested in designating their land for future industrial development as presented at the urban limit line committee meetings. The DiVittorios are prepared to pay their fair share as developers if they reach the point of acquisition of conservation easements in this area and elsewhere. He informed the Council that the property owners were reluctant to authorize him to use their names based on their fear of being held to a blank check. However, he assured them that it was important to release their names and authorized him to disclose this representation. He stated that this demonstrates that there are potential developers who are willing to pay their fair share of this cost. He suggested that the Council not put the proposed Measure P extension out to a vote of the people until it has reviewed the possibility of incorporating the provisions that provide for future development under Measure P to participate in funding for a greenbelt.

No further comments were offered.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Continued** the Discussion of the Proposed Amendments to the Draft Initiative to November 5, 2003.*

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 18 and 19 as follows:*

#### **18. JOINT SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES FOR SEPTEMBER 24, 2003**

**Action:** ***Approved** the Minutes as Written.*



**19. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR OCTOBER 1, 2003**

**Action:** *Approved the Minutes, as Amended.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

**20. VACATION OF A PORTION OF BARRETT AVENUE – Resolution No. 5725**

Director of Public Works Ashcraft presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) Adopted Resolution No. 5725, Vacating a Portion of Barrett Avenue.*

**21. GENERAL PLAN AMENDMENT APPLICATION: GPA-02-08: MONTEREY-PINN BROTHERS (Item tabled 9/17/03) *Resolution Nos. 5726 and 5727***

Mayor Pro Tempore Chang recused herself from this item due to a previous contract by one of the employees in her office.

Director of Community Development Bischoff indicated that the applicant is requesting that this item be continued to the Council's November 5 meeting. He said that staff did not recommend continuance to November 5 as requested by the applicant as that is the date that the Council will be dealing with Measure P and a number of other items. He recommended that the item be continued to November 19, should the Council be inclined to grant the request for continuance.

Council Member Tate stated that he had a conversation with the applicant this afternoon and that the applicant decided to move forward with their application this evening. He said that the applicant did not understand that they did not have the conflict with Measure P this evening. The applicant was requesting the continuance because they felt that the Council would be overwhelmed by Measure P this evening. It was his belief that the applicant wishes to proceed this evening.

Mr. Bischoff indicated that there are two requests before the Planning Commission: 1) a change to the General Plan designation of approximately 7.5 acres of a 9 acre parcel from multi-family medium to multi-family low. 2) Amend the line that separates the area designated commercial from the area that is designated multi-family medium. He informed the City Council that the Planning Commission was supportive of the lot line change. However, the Planning Commission does not recommend approval of the General Plan amendment from multi-family medium to multi-family low as this would be inconsistent with the Housing Element of retaining 25-acres of vacant land for higher density development. The Housing Element policy would ensure that the City has an ongoing supply of vacant

land available to provide for the lower income levels. Approving the general plan amendment request would reduce the amount of vacant land that is available for higher density development to about 12 acres, resulting in a significant reduction below the 25-acres called for by the Housing Element. He stated that the developer would like the entire property general planned multi-family low. He indicated that resolutions were included in the Council's agenda packet. The first resolution (a) would deny the reduction in density. The second resolution (b) would facilitate approval of the applicant's request should the Council support it. The third resolution would approve the adjustment to the line between the commercial and residential general plan designation.

Mayor Kennedy opened the public hearing.

Vince Burgos, Development Processing Consulting, stated that rarely does he have a client who wants to down zone property. He indicated that at the time the applicant purchased the property, it was zoned R-2. It went through a general plan change to R-3 zoning. After analyzing development at a conceptual level, it was found that the best approach to this type of property was to come in with a PUD zoning that would provide for a mix and a natural transition, architecturally, to tie development together. After he submitted an application for a PUD amendment, staff felt that it would be better if they proposed simple R-2 zoning if he could show that he could feather from the R-3 project that exists to the north to the R-2 zoning located to the south. He provided staff with a site plan that demonstrated this layout and proceeded with it. He was surprised to hear that at the Planning Commission level, there was an inventory issue. He requested Council approval of the general plan amendment request for R-2 zoning so that it would allow the property to compete under Measure P. He said that the City has not seen the approval of many open market R-3 affordable for sale units. He stated that he could not make an R-3 housing product compete successfully unless the Council set aside units for this housing product. If the Council was to approve the General Plan amendment, it would necessitate a change in the zoning designation to R-2.

Mr. Bischoff indicated that the applicant did not apply for a zone change. Therefore, a separate action would need to be taken to change the zoning to conform with the general plan.

No further comments being were offered, the public hearing was closed.

Council Member Tate indicated that he met with the applicant and that he was surprised to find that there have been no special set asides for R-3 housing products. Rather than changing the zoning and general plan, he felt that Measure P allowed flexibility in having set asides, specifically for the purpose of getting this type of housing product developed when there is a supply and demand that matches. He stated that this would be the route he would like to follow versus a general plan amendment approach. He felt that the Council should support the line change but would prefer to get the market rate R-3 housing that would provide an almost affordable market rate entry housing in Morgan Hill.

Council Member Sellers stated that he would be inclined to agree with Council Member Tate's comments regarding set asides for multi-family housing. He requested that staff elaborate as to the process if this is something that the Council needs to consider for the upcoming Measure P update.

Mr. Bischoff said that there has been a case in the past where the Council set aside for multi family development when the City realized that it was not getting apartment projects. He stated that Measure P

allows the Council to create set asides, if it wishes, for a variety of purposes, including multi family/apartment projects. The Council did this for one or more competitions. As a result of this, the City saw the development of a couple of apartment projects. He felt that set asides are an affective tool to achieve the type of housing product desired in the City. He said that the Council can look at set asides for future competitions and that set asides does not require an amendment to the RDCS or any ordinances current or future.

Council Member Carr noted that R-3 set asides could be set up where the product would be for sale units. He noted that the staff report refers to the 25-acre minimum in the R-3 inventory. He inquired whether the 25-acre minimum exists today.

Mr. Bischoff informed the Council that there is not a 25-acre minimum R-3 inventory attributed in part to the court house project. The court house is an 8 acre parcel that was designated R-3.

Mayor Kennedy felt that the applicant was stating that they believe that they would be more successful under an R-2 competition unless there is a set aside for R-3 development. He noted that the set asides are established by Council action. He inquired whether there was a proposal or plan to take this action.

Mr. Bischoff responded that the Council would need to establish the set asides in advance of the next competition or any given competition.

Council Member Tate noted that the Planning Commission discussed set asides and were supportive of set asides.

Mayor Kennedy indicated that he also met with the applicant and discussed their request. If the Council was to make an R-3 set aside, would it be consistent with Mr. Burgos' clients plans?

Mr. Burgos responded that R-3 set asides would allow this property to be competitive and to get a project going as this was the reason that the zone change was being requested. He said that there may be other proponents who would be competing for R-3 set asides.

Council Member Sellers felt that it would be a good faith effort on the Council's part to make a specific declaration of its intent of creating an R-3 set aside at the appropriate time.

**Action:**        *Council Member Sellers made a motion, seconded by Council Member Tate, to **Adopt** Resolution No. 5726, Denying the General Plan Amendment.*

Council Member Carr noted that the Council will be considering some changes to Measure P and going to the voters asking for their support of the changes. Within these changes, the City has talked about other types of set asides for downtown, mixed use, and other uses that include higher density. Should the Council make changes to set asides for the next competition, it would apply to the first competition of the update to Measure P. He inquired whether the Council would be creating so many set asides that it results in competition for set asides.

Mr. Bischoff said that without looking at the numbers and not knowing how many allocations would be available, this may be a concern. He said that he did not have a good answer without doing the math and

trying to estimate the number of units that will be available and how many of these units would be reserved for the downtown.

Council Member Carr recommended that the Council keep this in mind as it moves forward. He stated that he supports the recommended actions knowing that the Council would not actually create the set asides for some time. He felt that the Council needs to make sure that it knows this is the direction that it is heading.

Mayor Kennedy noted that the Council would be taking future actions to create set asides for R-3. Therefore, he would support the motion.

**Vote:**            *The motion carried unanimously (5-0).*

**Action:**            *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5727, Approving Adjustment to Boundary between Multi-Family Medium and Commercial General Plan Land Use Designations.*

**Action:**            *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Stated** that it would be the Council's intent to consider R-3 set asides at the next consideration (July 2004).*

**22.    ZONING AMENDMENT AND DEVELOPMENT AGREEMENT APPLICATIONS ZA-02-12/DA-02-11: NINA LANE-CHEN – Ordinance Nos. 1639 and 1640, New Series**

Director of Community Development Bischoff presented the staff report, recommending approval of the zoning amendment and development agreement applications.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:**            *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

**Action:**            *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Zoning Amendment Ordinance No. 1639, New Series.*

**Action:**            *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1639, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1437 WHICH ADOPTED A PRECISE DEVELOPMENT PLAN FOR A FIVE-UNIT PROJECT WITH COMMON OPEN SPACE AT THE SOUTHEAST CORNER OF JUAN HERNANDEZ DR. AND SAN VICENTE COURT. THE AMENDMENT INCLUDES THE ADOPTION OF A NEW PRECISE DEVELOPMENT PLAN FOR FIVE SINGLE-FAMILY HOMES AND ONE GRANNY UNIT (APNs 817-60-062 thru -067)***

*(ZA-02-12: NINA LANE-CHEN), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of the Development Agreement Ordinance No. 1640, New Series.*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1640, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MMP-02-01: NINA LANE – CHEN (APNs 817-60-062 thru -067) (DA-02-11: NINA LANE – CHEN)** by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

**23. ZONING AMENDMENT APPLICATION ZA-03-13: CITY OF MORGAN HILL – ZONING TEXT AMENDMENT -ATTACHED HOUSING – Ordinance No. 1641, New Series**

Director of Community Development Bischoff presented the staff report. He indicated that at the Council's meeting of October 1, a status report was brought before the Council for direction. The Council directed staff to bring back a comprehensive ordinance for its consideration that would allow for an alternative for attached housing units on an interim basis. He indicated that an amended ordinance was distributed to the Council this evening, reflecting the minor changes recommended by the Planning Commission last night. He highlighted the major features of the proposed ordinance, noting that the ordinance has a sunset two years from its adoption with a review after one year following its adoption. He said that the Planning Commission and the subcommittee were concerned that this was an ordinance that it did not want on going but that it was a stop gap measure to address an immediate problem relating to insurance coverage for attached units. Also, modifications for the detached units would only be available to projects that have allocations in the 2004-05 fiscal year. He felt that this situation would only apply to approximately 20-40 homes. Besides the two added amendments to the proposed ordinance recommended by the Planning Commission, there is one other amendment that staff would propose, a clarification regarding subsection 17. He said that this section should be amended to read: "Future Measure P applications ~~may~~ **shall** be subject to the following requirements. Subsection 17.a should also be amended to read: "Applications may include plans for both attached dwellings ~~and~~ **or** modified setback drawings..."

City Attorney Leichter said that although the impetus which brings this to the Council's attention were stated as being financial difficulties or inability of developers to obtain the insurance product, this alone cannot form the basis for a zoning change or amendment due to financial inability to comply with zoning requirements. However, this would result in the inability to satisfy the City's below market rate housing commitments, and the fact that the detached housing product is a more viable attractive product which enhances the aesthetics of the surrounding communities. These are the findings on which staff has predicated this ordinance and not the inability for developers to obtain the insurance or the financial impact associated with attaining insurance.

Council Member Sellers referred to Section 17a and recommended the elimination of the word “both.”

Mayor Kennedy opened the public hearing. Dick Oliver, developer and member of the subcommittee, informed the Council that he would answer any questions which it may have. No further comments being offered, the public hearing was closed.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1641, New Series.*

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1641, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ALLOWING MODIFIED SETBACK DWELLINGS IN RESIDENTIAL PROJECTS DUE TO CONSTRUCTION LIABILITY INSURANCE ISSUES SURROUNDING OWNERSHIP ATTACHED HOUSING (ZA-03-13: CITY OF MORGAN HILL – ZONING TEXT AMENDMENT/ATTACHED HOUSING)**, as amended, by the following roll call vote: **AYES:** Carr, Chang, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **27. CONSIDER REQUEST FROM MORGAN HILL KIWANIS CLUB TO WAIVE SPECIAL EVENT PERMIT FEES**

Mayor Kennedy opened the floor to public comment.

Barbara Kimmich, representing the Kiwanis Club, requested that the Council consider waiving the Special Events permit fee for the Holiday Parade this year as has been done in past years.

No further comments were offered.

Council Member Tate felt that the Council should support the Kiwanis Club’s request to waive the fees for the Holiday Parade. He understands that there is a budget problem but that it was not his understanding that the City would leave the Holiday Parade activities out. He stated that he would be happy to transfer \$125 from the Youth Empowered for Success (YES) budget. He requested that this event gets prioritized up there with IDI Fourth of July Activities.

Council Member Carr suggested that YES be a sponsor for this event and that the City find ways to involve character building for youth as the project is planned.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) Agreed to fund the Special Event Permit out of the YES funding.*

## **24.     STANDARDS FOR INTERIM DEVELOPMENTS**

Director of Community Development Bischoff presented the staff report, indicating that the Dayworkers Committee is aggressively pursuing the development of the dayworker center at the intersection of Depot and Main Avenue. He indicated that they have run into some funding issues as there were certain expectations at the beginning of the process that there would be certain costs involved. The Dayworkers Committee has found that the more they got into this project, the cost became greater. An area where costs seem to be high are associated with the required on site improvements. He indicated that the City's zoning codes require that all projects include paved parking lots, landscaping and parking lights. The costs associated with these improvements were not anticipated in the overall budget for the facility. He stated that it was the Dayworkers Committee's belief that to install these improvements on an interim project may not be money well spent. He indicated that the Dayworkers Committee has a three-year lease on the property and that it was their belief that they would not be on the property any longer than five-years. Therefore, they do not believe that it is financially prudent to install the improvements. He said that the Dayworkers Committee is requesting that the Council consider amending the zoning codes to provide relaxation of standards for interim uses. He said that any changes proposed would need to be reviewed and approved by the Planning Commission. The Dayworkers Committee is requesting that the Council refer this matter to the Planning Commission, requesting that they give consideration to what amendments might be appropriate in light of the circumstances of the dayworker center.

Mayor Kennedy opened the floor to public comment.

Julian Mancias, Chairman of the Board of the Dayworkers Committee, informed the Council that the Committee has been actively pursuing a location for a dayworker facility at Main and Depot. He requested City relief from some of the costs that the temporary uses may incur.

America Romero, director of the dayworker center, stated that up to this point, the Dayworkers Committee has completed all the site design for the Center according to City requirements. She said that the South County Dayworkers Committee has a five-year lease with a sixth-year option to lease on a month to month basis. She noted that the municipal code does not make provisions for staff, planning commission or Council to amend or relax the requirements to accommodate an interim use facility. She requested that the Council give staff direction as to the proper course of action to take to come up with requirements that are adequate, yet friendly, to an interim use. She said that it is approximately a \$200,000 expense to install permanent improvements that will more than likely be torn out by the property owner as he gets ready to proceed with his project in a few years. She indicated that the dayworker center has received a lot of community support with most expenses being donated by members of the community. However, they are still faced with the extremely high fees and expenses due to the permanent structure requirements even though this is an interim use facility. The Dayworkers Committee would like to keep costs down as it would give them an opportunity to have that much more in reserves for a future permanent facility. She requested that the Council amend the ordinance in order to allow a scaled down version of the following four items: 1) parking lots with lights built to permanent specifications, 2) additional curb and gutter on site, 3) landscaping, and 4) City

fees/development fees. She indicated that the offsite requirements have been covered by a previously approved RDA loan to the property owner, noting that the City will recuperate these costs at a later date when the owner gets ready to develop the property. She stated that up to now most of the money earmarked for this project will be coming back to the City. She requested that the Council consider relaxing the requirements so that the dayworker center can become a reality by the end of the year.

Mr. Mancias clarified that the Dayworkers Committee will be pursuing a five year lease with the option to extend the lease at the end of the five-years. This gives the City more reason to invest money as the center will be located in this location for a while. The Dayworkers Committee does not want to waste money and wants to make sure that the money saved is put into a permanent site. He felt that the Dayworkers Committee can proceed however the Council decides but that it is a goal not to waste money. He indicated that the community has been supportive and that a lot of the cost will be paid for by community individuals, volunteers and by donations. He felt that this would result in an economically feasible use if spanned out 5+ years.

Mayor Pro Tempore Chang inquired as to the term of the lease signed.

Mr. Mancias responded that it is a 3 year lease, with the lease reading 3-5 years. At the end of 5<sup>th</sup> year, it is a month to month lease option whereby either party can terminate the lease. He indicated that the Dayworkers Committee has received a verbal agreement that states that they have a five year lease option. If it is advantageous for the Dayworkers Committee to enter into a five-year lease, they would agree to do so. If a three year lease is preferred by the Council they can also agree to this.

Mayor Pro Tempore Chang said that term of the lease is one that is decided upon by the owner and the Dayworkers Committee and not the Council. She said that when the Dayworkers Committee came before the Council requesting an interim use, the Council understood that it would be a three-year lease a short term lease. She felt that once you get into a five year period, it is no longer a temporary use.

Mr. Mancias said that should the City relax some of the money that the Dayworkers Committee has to pay; it would be easier to proceed with a three year lease. He stated that the more money invested in the property, the better it would be for the center to remain a little longer. If the Council is willing to relax some of the requirements, the Dayworkers Committee could spend less money on the site, saving these funds for a future permanent site/facility.

Charles Weston, property owner, indicated that the lease is written at three years but that it should have been written for a five-year lease. He stated that he would be willing to amend the written contract to state that the lease can go up to five years and on a monthly basis thereafter. He felt that the amendment before the Council would not only affect the dayworker center in terms of some of its on site costs, but that he sees other applications. It was his belief that if it does not affect the structure of a building or the health, safety and welfare of its inhabitants or handicaps accessibility, the Council should be able to have some latitude. He felt that there are social goods that come up on various projects that fail because they cannot get around certain ordinances. He felt that the Council should have the ability to determine the project's merits irrespective of what is stated in the ordinance. He said that the process that developers follow is rather cumbersome, difficult and straight forward and that those who administer the ordinance do not have the ability to have discretion. With the proposed amendment, the Council would have the ability to have discretion.



No further comments were offered.

Council Member Sellers noted that the bottom of the staff report references the fiscal impact. It is stated that "...any waiver or reduction or indefinite deferment of fees would negatively affect..." He inquired whether there was a president for any short term deferment, allowing the project to proceed.

Mr. Bischoff did not recall the City ever approving a deferment of improvements. He said that there are other jurisdictions that allow for the payment of in lieu fees or the deferral of improvements for a certain period of time.

Mayor Pro Tempore Chang noted that the staff report indicates that the dayworker center may be eligible for future CDBG funds. She inquired when these funds would be made available.

Director of Business Assistance and Housing Services Toy indicated that the current CDBG cycle starts in December with recommendations coming to the Council in April. At that time, funds would be available in July should the Council make allocations available to a project. He said that the Council has the option of reprogramming funds from existing projects such as Galvan Park. Staff recently determined that this project was under budget and that there could be upwards of \$30,000 available for the Council to reprogram for current activities this year. This funding would be available immediately following a public hearing to reprogram funds.

City Attorney Leichter stated that the City needs to have a rational basis and not be arbitrary or capricious when ordinances are adopted. When you go back to the reason why this is being requested, the inability to pay, there has to be a linkage between the reason why there are parking lot and street lighting requirements. She said that the City would need to respond to why it is appropriate to defer improvements for a particular organization. She felt that a linkage was necessary.

Council Member Sellers felt that there is a potential to make a linkage why this particular case is a unique situation as the City is trying to accommodate a temporary use that more than likely will not happen again. Yet, the City should not create a precedent that would have unintended consequences. He inquired whether there was medium to do both.

Mr. Bischoff indicated that staff and the Planning Commission can brainstorm various ideas and return to the Council with suggestions or with a draft ordinance for Council consideration. He informed the Council that staff has not consulted other cities to see if they have adopted policies or ordinances relating to interim facilities that may be appropriate in this case.

City Manager Tewes said that cities have different underlying standards and requirements. He said that some cities do allow projects to proceed without full parking lots and that some cities do not require landscaping. He was not aware of any instances where a separate standard has been developed for an interim use.

Council Member Sellers noted that the staff report points out that there is no guarantee that the dayworker center would be temporary in nature even though it would be highly likely that it would be a temporary use. He did not believe that it would be appropriate for the City to tell the Dayworkers

Committee that it cannot stay on this site for more than three years. This would result in the City making changes to the ordinances that become wholesale in nature and that the implications would go well beyond what the Council was trying to do. He felt that everyone shares the same goal but that he was trying to make sure that the Council does not destroy a lot of other things in the process.

Mayor Pro Tempore Chang felt that this use could be temporary in nature. She felt that it would be up to staff and the planning commission to figure out the most appropriate way to handle this situation.

Council Member Carr stated that he was struggling with the fact that the Council cannot draft something that is specific to this project as it could apply to other situations. He said that the Council set upon a course some time ago with CDBG dollars that were allocated to this project and that the Council felt that this was the right way to address this issue. He felt that everyone hopes that as the door opens, the focus would be on a permanent site. In the meantime, the Council will have changed a set of rules for the entire community as the Council cannot make it specific to this project. He felt that an ordinance amendment would open the doors for other uses to come forward requesting relaxing of city standards. He felt that the Council needs to figure out a way to deal with this issue.

Mayor Pro Tempore Chang felt that the City could implement an ordinance on a six month trial basis to see whether there are other implications. If the ordinance does not work, the Council could take it off the books. She recommended that the Planning Commission explore the possibility of implementing an ordinance. Should the Planning Commission recommend an ordinance be adopted, supported by the City Attorney, the Council can proceed with the adoption of the ordinance. If not, the Council would need to go through a different route. She noted that the implementation of an ordinance would take 2-3 months and would delay the project. An alternative would be to use the \$30,000 CDBG funds to construct the parking lot. She stated that she did not like using CDBG funds for temporary uses as it would be a waste of money. She said that she reviewed the Dayworkers Committee's budget, indicating that they are not that far off budget, noting that they have received major donations for this project.

Council Member Sellers said that given that the City has extra funds in this year's CDBG budget that were not expended, this may be an appropriate reallocation. However, he was not willing to tie up future CDBG funds. He requested that staff explore some of the deferment issues because of the specific nature of the temporary use. He recommended that staff focus on ways to make the existing ordinance work and to consider, if necessary, short term deferments that meet legal requirements. Should the Dayworkers Committee receive donations for landscaping, they would be allowed to install them within a certain period of time as opposed to paying fees. He recommended that the City help the project get off the ground and provide additional funding to bridge the gap and not delay the project. He noted that it would delay the project by 2-3+ months if the City goes through an ordinance amendment process.

Council Member Tate said that everyone wants the dayworker center to work. He indicated that he and Council Member Carr met with Ms. Romero and Mr. Mancias and discussed at length some of their concerns. There were questions regarding the long range plan for the dayworker center and its future location. The response was that it was felt that the center had to open and be made to work so that they could get to the point where they can proceed with long range planning. He noted that this week the Council is receiving a request to define what an interim use means and bend ordinances. He said that he understood Mr. Weston to state that he felt that this was applicable to other situations; however, he did not see what they were. He felt that the issues were specific to this use. He said that he was trying to

find a way to make the interim use work and that he has not heard anything suggested that he would be comfortable supporting. He stated that the focus appears to be on making the dayworker center work. Now he hears Mayor Pro Tempore Chang, who serves on the Dayworkers Committee, ask what would happen if this does not work at all. Before taking all these extraordinary steps, he would like to understand what would be in place to assure the project would work and what the operating practice would be. He stated that he would like to come up with an innovative solution to this problem without changing the City's ordinances and codes.

Mayor Kennedy inquired whether the applicant has any information on how facilities like these have been built in other communities.

Ms. Romero indicated that some cities have placed this similar use in permanent buildings, others as a mixed use facility, while others rent a building on a month to month basis. Therefore, there are variations to make the use work. She indicated that there are not many buildings available in Morgan Hill. Through natural selection, the day workers have chosen the Depot/Main corner. Therefore, this would be the optimum place for them to be.

Mayor Kennedy indicated that he has seen a fair amount of modular buildings throughout the City. He inquired how the City has typically addressed modular buildings.

Mr. Bischoff indicated that Morgan Hill does not treat modular buildings differently than it does permanent buildings as the code does not differentiate between these buildings. Therefore, the same standards would apply. He stated that staff could contact other cities to see how they have handled installation of modular buildings and under what circumstances to determine what might work best.

Mayor Kennedy said that it would be a shame to spend/waste a lot of money on improvements that would be torn up 3-5 years later, noting that most of the labor and material have been donated. He felt that the City needs to find a way to make this work.

Council Member Carr said that when the Council decided that it wanted to help address the issue of dayworkers in Morgan Hill, the Council stated that it did not want it to become a city project. He noted that the Council has become increasingly involved in this project financially, in time, and other ways. He indicated that the economic development subcommittee has asked that anyone coming before it for assistance has to demonstrate a need. Applicants would need to open up their books and show the subcommittee their finances, how the business will work, and identify the gap that is being requested be funded. He felt that staff could find unique ways to address the issues that perhaps the applicant did not think about and that solutions may result from existing programs. He did not know if this process has taken place in this situation and whether staff has been able to review the issues. Perhaps the Council is not talking about the need to relax the standards in this case. If there is a very small gap that needs to be realized in order to install the improvements, maybe this is what needs to be discussed versus discussing the standards. If there is concern about the loss of revenues when the improvements need to be torn out, he felt that this would be a private developers concern and not the City's concern at this point as the City has not been presented with a long range plan. He recommended that the Dayworkers Committee go back and involve staff to determine the gap and figure out a way to address the gap versus addressing this globally.

Mayor Pro Tempore Chang indicated that the Dayworkers Committee has a set a number and that they requested staff's assistance. She said that the suggestion of an interim ordinance was a staff recommendation. She said that Mr. Toy has done a wonderful job figuring out alternatives. She recommended that the Dayworkers Committee share these numbers with the Council.

Ms. Romero presented numbers that reflect the costs for permanent structure requirements and what it would mean if the standards were relaxed. She said that it would cost \$250,000 to get the project going. If you take into account donations, the Dayworkers Committee is looking at a difference of \$50,000.

Council Member Carr said that he has heard from the Council liaison to the Dayworkers Committee that most of the items are covered through donations and donated labor. Therefore, the discussion is not about the \$250,000. He said that talking about filling this gap would be quicker and easier and would cause fewer problems for the City in the future versus changing standards for development. He felt that this is the discussion the City should be having. He was not suggesting that the City writes a check and fills the gap but that there may be ways that the City could help facilitate how things are done.

Council Member Sellers inquired whether there was general Council concurrence on the appropriate use of the \$30,000 CDBG funds. He said that there are specific requirements for the use of CDBG funds such as community development projects. He felt that this use would fall within the traditional definition of CDBG funding and would be an appropriate use of funds. He stated that the use of CDBG funds is one that the Council does not take lightly, particularly in these tough budget times. He said that every time this issue is raised, the Council raises the appropriateness of its participation. Should the Council have concurrence on the use of the \$30,000 CDBG funds, this would help the Dayworkers Committee get further along. The City could take other interim steps such as allowing staff to review opportunities within existing ordinances. This would allow the project to proceed sooner, would be less painful, and would show an appropriate balance between public/private and non profit that the Council needs to strike.

Council Member Tate noted that the Council has already allocated \$50,000 for this interim use and that he did not know the probability of success.

Council Member Sellers recommended that the allocation be based on a demonstration of need and viability on the part of the entity. The Dayworkers Committee could be asked to come back to demonstrate both of these things prior to the issuance of funding.

Council Member Carr stated that he would support Council Member Sellers recommendation as one of the options. At the same time, he would be interested in hearing from staff where the City would get the funds for Galvan Park, if funding is to be reprogrammed, as this is an important project to segments of this community.

Council Member Sellers stated that it was his belief that there were cost savings with the Galvan Park project.

Mr. Toy said that the City budgeted \$246,000 for Galvan Park and that it is estimated that the project will come in at \$215,000. Therefore, there would be approximately \$30,000 in cost savings upon completion of the project.

Mayor Pro Tempore Chang felt that there are many uncertainties about waiting for this item to return to the Council. She stated that she has worked thoroughly on the numbers with the Dayworkers Committee. She said that the Dayworkers Committee has an aggressive date to start this project. They were hoping to have definitive answers. She felt that Council Member Sellers' suggestion of allocating the \$30,000 in CDBG funding and the review of existing codes was an excellent suggestion, an action that could be taken this evening. If Council Member Carr is interested in reviewing the numbers, she would be willing to meet with him tomorrow.

Mayor Kennedy inquired what would happen to the schedule should the Council delay a decision in order to allow additional information to be provided to Council Members Carr and Tate.

Council Member Carr stated that he was not looking for more time to meet with Mr. Mancias and/or Ms. Romero as he met with them last week to discuss these issues. He did not believe that a package has been put together. He said that the Council is assuming that the improvements would cost \$250,000 and that the Council has to fill the \$200,000 gap. He stated that he was not comfortable relaxing development standards that have been very important to this community on a piece of property that is important to the downtown in a way that does not coordinate with the Downtown Plan. He felt that alternatives exist short of relaxing the standards that would get the project moving along. He did not believe that the Council can make a decision tonight without benefit of additional information.

Council Member Sellers noted that there is a potential of using \$30,000 in CDBG funds if it can be demonstrated that there is a need, the use is viable and that the City has looked at other options for taking existing ordinances to help bridge the gap. He recommended that the Dayworkers Committee go back and look at this comprehensively, based on its budget, opportunities and existing ordinances. He stated that there may be other creative mechanisms that can be pursued. He felt that the Dayworkers Committee can return with a complete packet of information, demonstrating how they have bridged the gap.

Mayor Pro Tempore Chang indicated that she would provide a packet of information that has been put together by Ms. Romero as it contains all the numbers. She said that a portion of the funding has been through donations. In order to make this temporary use work, it would require that the City to relax its standards with regards to the installation of parking lot/lights, curbs and gutters, and landscaping, including permit fees and development impact fees.

Council Member Tate felt that reviewing the numbers may allow for innovative means to help this project bridge the gap short of amending the ordinance, allowing the project to move forward.

Mayor Pro Tempore Chang indicated that she has spent time with staff considering alternatives that they believe would work. The Dayworkers Committee is requesting that the Council assist with the four identified improvement requirements.

Mayor Kennedy said that he hears Council Members Carr and Tate stating that they need more information before moving forward with what Member Sellers' suggestion.

Council Member Sellers suggested the following: 1) an initial review of opportunities within the existing ordinance, figuring out ways to make it more appropriate for this project; 2) give consideration to temporary deferment within the existing ordinance; 3) if there is a continued gap, the Council to sit down and go through the Dayworkers Committee's budget, determining how the potential availability of the \$30,000 CDBG funds would be utilized; and/or 4) the presentation of a comprehensive report on the viability of this project. He felt that these were the same suggestions being suggested by Council Member Carr, consolidating the issues that need to be addressed. He recommended that the Dayworkers Committee return to the Council in 4-6 weeks and identify areas of resolution, identifying the gap that would allow them to proceed and be viable.

Mayor Pro Tempore Chang said that the dayworker center has an aggressive goal to break ground before November 1. If the Dayworkers Committee is not given the money, they will not be able to proceed with the project. She said that there are construction items that can be undertaken while waiting for an ordinance amendment. She felt that a definitive answer would help. She recommended that the dayworkers center be granted the \$30,000.

Council Member Sellers noted it would take three months before enacting an ordinance amendment. He noted that the Council would not be able to allocate the \$30,000 this evening as this action was not a part of the agenda. Therefore, allocation of the \$30,000 would need to return to the Council for consideration. In the meantime, the Dayworkers Committee can work toward demonstrating viability, need and how the funds would be used.

Council Member Carr inquired whether a motion was necessary as he felt that the Council has given direction to staff based on Council discussion.

City Manager Tewes said that staff needs clarity on one point. He said that it is the municipal code that provides for these requirements. He said that the municipal code does not allow waiving the requirements under any circumstances. He stated that the request before the Council is to amend the ordinance to allow the Planning Commission or the City Council to make certain findings in certain circumstances so that the requirements can be amended. Therefore, the ordinance would need to be amended if any of the solutions involve waiving the requirements. He stated that he preferred the notion of a deferral as opposed to waiving the requirements but that it would still require an ordinance amendment to accomplish this.

Council Member Carr stated that he was not convinced that changing the ordinance was the way to go. Based on the information presented by Mayor Pro Tempore Chang, there are only two items that suggest that the City change the ordinance. He said that the unintended consequences of what is being discussed are far greater. He felt that the Council needs to have a better package brought before the Council to discuss these issues. He suggested that the Council direct staff to look at the proposed project, including fees, confirming that the improvements equate to \$200,000. He said that staff can meet with the Dayworkers Committee, reviewing their budget to confirm the gap needed to make this project move forward. He wanted to talk about the gap and figure a way of bridging the gap without changing the municipal code and relaxing standards.

Council Member Tate felt that the Planning Commission may find that there may be benefits to other projects and that the Council may find a way to defer certain standards/requirements for a certain period

of time for interim uses. As the Council is anxious about the timeframe, he felt that the Council would want to proceed.

Council Member Carr stated that it is his hope that in staff's review of the use that the City may be able to narrow the scope of things that would need to be deferred or waived. He stated that he did not want to slow down the process. He inquired whether there was a way to scale down the four items identified so that the Council does not have to waive the requirements listed in the current standards.

City Attorney Leichter stated that to the extent that the Council is considering waiving, loosening, or deferring requirements, she has heard a lot of different scenarios this evening. She stated that she would appreciate direction from Council. She inquired whether three years would be considered an interim use or whether a one year lease followed by multiple one year leases are to be considered an interim use. She inquired as to the Council's sense in terms of an interim use as she would need to draft an ordinance as narrowly as possible.

Council Member Tate responded that the Council wants to do what makes sense. He indicated that he would be willing to work with a couple of planning commissioners and study this issue.

Council Member Sellers felt that the Council has given sufficient direction to staff to further this issue and try to figure out a way to bridge the gap.

Mayor Kennedy noted that Mayor Pro Tempore Chang has spent a lot of her own time trying to put all this information together, working with staff. It was his belief that it was the desire of the majority of the Council to ask staff to help work through this process and obtain the missing pieces of information; coming up with ways to make the interim use work. He felt that involving the Planning Commission was a good suggestion as they might come up with good ideas.

Mayor Pro Tempore Chang indicated that the financial packet has been put together but has not been presented properly at this time. If all information can return to the Council with the exception of the interim changes, she inquired whether this portion can return to the Council for consideration in two weeks.

City Manager Tewes summarized that the Council has asked that staff help to work through the process and help bridge the gap, involving the Planning Commission. He inquired whether the Council would like staff to draft an ordinance that would allow for the waiving, loosening and/or deferring the standards. He noted that some Council Members expressed a concern about such an ordinance while others suggest that this must be a part of the solution. He stated that he was not clear as to the Council's direction in this regard. He said that there are two challenges in drafting an ordinance and that the City Attorney has addressed one of the concerns. He felt that approval of a deferral would be better than waiving the requirements. There would be a challenge in drafting an ordinance in such a way that would withstand legal scrutiny as the ordinance would have to be applied to similar situated projects.

Mayor Kennedy noted that the current ordinance requires improvements to be installed for interim uses as though it was to remain a permanent use. Anything less than this would require a change in the ordinance, therefore, the Council has to proceed with an ordinance amendment. He stated his support of

appointing a Council subcommittee to help direct this activity, working with staff. He recommended that the Planning Commission designate a subcommittee of the Planning Commission as well.

Council Member Tate noted that the Planning Commission met last night and that it would be a couple of weeks before they meet again.

Mayor Kennedy recommended that the Chair of the Planning Commission appoint two planning commissioners to work on this project.

**Action:**            **No action taken.**

## **25.    SENIOR SPACES AT THE INDOOR RECREATION CENTER**

Recreation and Community Services Manager Spier presented the staff report and requested Council direction on determining whether the senior nutrition site should be a programming space that would be continued within the Indoor Recreation Center (IRC). She informed the Council that next week, the principal project manager will be before the Council with the final schematic design. She stated that the senior nutrition is a key programming element. She stated that staff has held several meetings with Catholic Charities as well as representatives from the Health Department. Catholic Charities have expressed their concerns and commitment of being a part of a whole project. She indicated that the senior advisory committee expressed concern regarding the programming spaces. The committee requested that staff provide details regarding the programming spaces and a programming requirement document. She stated that staff recently received this document from the Sports Management Group. Staff will be presenting this document to the Parks and Recreation Commission, senior advisory committee followed by City Council review. The senior advisory committee talked about specific spaces within the indoor recreation center they would like to see move on throughout the schematic design. She indicated that the committee would like to see the following incorporated in the design: 1) computer/technology room (dedicated space of approximately 300-400 square feet); 2) more classroom space dedicated for senior programming uses, activities and events; and 3) the kitchen to be built to have dedicated hours (8 a.m. – 2 p.m.). She said that the kitchen recommendation being forwarded to the Council fits within the schematic design and provides some community use (e.g., ice machine and dishwasher). The senior advisory committee did not believe that this was a true multi use facility such that a group that wanted to use the kitchen that were not part of the senior nutrition program would not be able to utilize the kitchen M-F 8 a.m. to 2 p.m. to the capacity that they thought should be the case. The senior advisory committee requested that the Council consider other issues: 1) the current level of programming currently in place is not adequate and that they would like to see more programming activities and events occur for seniors and active older adults. 2) They were interested in a city-wide policy where they would have access to activities. However, it was not defined whether these activities are to be subsidized or free where they would be able to use other facilities (e.g., community and cultural center). 3) They would like to see a senior services policy from the Council relating to fees, facility use, and programming spaces at the senior center and the community & cultural center. 4) They would like to see a senior services coordinator. She stated that staff considered the senior advisory committee input, reviewing other potential sites within the city such as the Grange, the parish hall located across from the community and cultural center, including the indoor recreation center. She said that an informal vote was taken, indicating that the vote was split as to whether seniors chose to stay or be a part of a larger facility. She stated that the key recommended action necessary this evening is to



receive Council direction on whether the senior nutrition programming is to remain included in the center. Once this decision is made, staff can bring forth the schematic design to the Council next week.

Council Member Tate said that he had a conversation with Mayor Kennedy this afternoon, noting that the Mayor raised a distinction in terms of how the City uses the word programming. He inquired whether there were two kinds of programming or whether there was one programming of spaces. He inquired as to the activities that the seniors would participate in at the senior center. If the City is programming spaces without knowing what the activities are, how would the Council be able to make decisions? He inquired whether the City would want to provide a senior center where seniors would want to use the facility all day, participating in a full day of activities. If so, would the nutrition center need to be at the new center to accommodate seniors? Will seniors use the center for an hour or two and the nutrition center be located somewhere else. He stated that he did not understand the programming of the activities aside from the spaces. He felt that the programming of an intergenerational computer room would be a great activity, noting that it has been taken out of the schematic design.

Ms. Spier clarified that what is being discussed this evening is programming spaces. These are areas that allow the City to provide a wide range of activities (e.g., multi purpose use) versus those areas that are tailored for a specific use (e.g., nutrition site). She said that what is being proposed is what the seniors are receiving today 8 a.m. to 2 p.m., Monday through Friday with a senior nutrition program being the main focus. She said that there will be opportunities for lounge use that are informal and different from the nutrition program. She said that the City is very limited as far as the capital construction budget in providing extra spaces such as classrooms. She stated that she informed the senior advisory committee that there will be areas that will be subsidized, programs that will be offered free of charge, while others will require a service fee. She informed the Council that a question was posed as to whether there will be indoor swim classes at the indoor recreation center to which she responded that there would be. However, she felt that the real question is whether the senior swim classes were part of the free programming. She stated that at this point, it was not a free program. She indicated that the City has not taken the next steps where all spaces have been programmed out.

Mayor Kennedy stated that he met with Marilyn Gadway, Chair of the senior advisory committee, last week. She expressed concern that there is only one program for seniors, the nutrition program. The YMCA provides other activities at the Friendly Inn such as card games but that activities are centered on the nutrition program. She expressed her frustration that the City does not have a lot of senior programs/activities scheduled throughout the day and/or weekends. He felt that these activities can be conducted at other locations such as mobile home parks, the Grange, and/or the Community and Cultural Center. The question is whether the Council wants to fund these programs beyond the current funding of the nutrition program. He stated that the first step in the design process should be determining the programs, which in turn, determines programming. He felt that it was important for the Council to decide this evening whether it wants to fund additional programs/activities, earmarking monies to do so. He understands that the City is struggling through a tight/tough budget situation. He recommended that the Council fund more senior program activities. He said that the City has the capability of providing these programs and activities in the design of the indoor recreation center.

Council Member Tate said that the same would apply for the youth.

Mayor Kennedy agreed that no money has been reserved for youth activities other than for the Youth Empowered for Success program. He felt that the City needs to do more in providing programs/activities for its youth. This will then determine what the indoor recreation center will become. He felt that it was late in the game in terms of design as the City is at the conceptual design stage. This would result in having to go back and readdress the programs.

Council Member Sellers requested that staff address the steps to be taken next week, talking about individual spaces. He felt that the City still has some flexibility in terms of program spacing.

Deputy Director of Public Works Struve said that staff could continue its discussion with the senior advisory committee. He said that as long as the City could stay within the exterior walls of what has been drawn in terms of total spaces planned in the center, the City would remain within budget. He said that it may be the case of dividing up the rooms differently. He stated that staff would be back next week with a complete list of programming spaces so that the Council can see what spaces/square footage have been planned for particular rooms. He said that there are additional rooms available for senior use such as a dance room and a lounge, noting that there is 5,000 square feet that includes the multi purpose room. Therefore, there is approximately 3,000 square feet of programmable space within the center for seniors. This space has not been defined in absolute specifics but that staff has talked about the types of spaces that would house senior programming. He stated that the City could still talk about how to better meet the seniors' needs within the total square footage should the City want to divide space up differently. He said that budget limits programming and the goals for the building which is 100% cost recovery. He stated that it is a matter of balancing these two things as an overall driving goal and the best that the City can do is try to gain from the groups what their needs are.

Council Member Sellers said that the cost recovery issue is frustrating to him. He said that the City of Milpitas is developing a brand new senior center of approximately 5,000 square feet. The City is setting aside 5,100 square feet for the center. He stated that the City is not limited to a significant degree in its ability to serve the senior community with a few exceptions such as increasing the space for the nutrition program. He said that the City has talked about accommodating what is anticipated as the growth within the existing facility. He felt that there was an opportunity to go back to the senior advisory committee, within the footprint that has been established; asking them what they believe should be anticipated for the facility. In terms of youth programs, he noted that the City is talking about an intergenerational center to do some programming as has been seen in other facilities. The center can have computers in the youth wing and gives an opportunity for interaction of both groups to use the computers. He felt that there are a lot of opportunities that the senior advisory committee would like to explore. He did not believe that the City was limiting itself.

Mayor Kennedy inquired whether the City may be losing some things based on the philosophy of cost recovery. Would the City be getting what it really wants in this facility?

Council Member Sellers did not believe that it was as much about the cost recovery as the price tag for the entire facility. He said that the City had a finite amount of money that was set aside for the center. He felt that the City could justify enlarging or expanding every component of the facility. He noted that the City does not have the resources to proceed with an expanded "bells and whistle" version; therefore, the City compromised itself. He felt that every component is functional, makes sense, would be a

positive revenue generator, and would provide opportunities for potential future expansions based on the footprint and the architecture.

Mayor Pro Tempore Chang said that as of Monday, the center was \$800,000 over budget. Therefore, the subcommittee had to go through an extreme process to eliminate items. It is the goal of the subcommittee to keep the space as planned, finding ways to retain space. She felt that the subcommittee and staff tried everything that it could to maximize spaces based on the money earmarked for this project. She indicated that the YMCA is provided with \$75,000 in grant money annually for programming/activities. She felt that there were some opportunities when looking at program in working with the YMCA, changing some of the scope or heading toward a different direction.

Mayor Kennedy inquired what services result from the City's \$75,000 grant to the YMCA.

Carol Wood, YMCA representative, responded that the \$75,000 pays her salary and pays for the building's upkeep, lights, overhead, and program activities at no charge to the seniors. She did not know if these activities/programs would be offered at the new center as space needs would need to be determined.

Senior Advisory Committee Member Sharon Lennard felt that the City was at a point in time that a decision needs to be made on the philosophy of how it will deal with the seniors in the community. She stated that the existing nutrition program is working well. She said that there is a large base of seniors that are moving up in years that can be served. It would be exciting to see the possibility of an intergenerational section. She does not see that this space is being accommodated. She expressed concern about the size of the nutrition center and felt that the City is being short sighted in senior spacing. She felt that the City should have rooms for hospice counselling, quilting classes or bridge space that she does not see included in the plans. If the City cannot afford to incorporate these items at this time, she recommended that space be considered for future expansion. She sees the facility growing with intergenerational activities taking place but that she did not see the thought process in place to use the facility to its full potential. She indicated that the highest priority programming space needs for seniors, include the following: 1) a nutrition center, 2) classrooms and 3) meeting rooms. She stated that it would be helpful for the seniors to be able to use rooms throughout the City, in general.

Council Member Tate said that when he attended the Senior Advisory Committee meeting in September, the Commission passed a motion regarding the need for a requirements document. He requested that this document be addressed.

Senior Advisory Committee Member Ken Mort felt that the City needs a requirements document that addresses activities, required floor space, scheduling, etc., that are important priority items for the architect to understand before proceeding with a design. He identified priorities for seniors as follows: 1) a multi purpose room, 2) offices for social/health services; 3) computer room; 4) dedicated lounges for both seniors and youth; 5) dedicated game room for both seniors and youth. The low priorities were as follows: 1) waterslide; 2) spa; and 3) rock climbing wall. He identified the following top priorities for youth: 1) gymnasium/snack bar; 2) computer/study rooms; 3) dedicated lounges for both seniors and youths; 4) dedicated game rooms for seniors and youth; and 5) rock climbing wall. Low priorities include the following: 1) classrooms; 2) personal training; 3) counselling offices for youth. He stated that he understood that a lot of the items do not fit in with the income producing activities. He felt that

the Council needs to be upfront about how much of the square footage of the facility has to be income producing and how much will not. He expressed concern that the spacing for the senior nutrition was on the small side, noting that the Friendly Inn has comparable square footage. He did not believe that the City was providing enhanced services other than providing the seniors with a new facility. He felt that this would be a problem if the senior population increases. He indicated that the multi purpose room could be used to house the nutrition center but that it has to be large enough to accommodate the use.

Council Member Sellers said that he had the opportunity to sit in on a senior advisory committee meeting. He felt that the Council needs to do a better job in its communications with the committee. He stated that he has given a lot of thought about ways the Council can try to bridge the communication gap. He indicated that a majority of the items identified by Mr. Mort are included in the rough schematic drawings. He said that it is difficult to see these specific spaces in the design layout. He indicated that spaces are not set in stone at this point. He supported going back to the committee and walking them through the layout that would include a senior nutrition center, a multi purpose room, etc. They could identify whether uses/spaces have been omitted. He said that the Council could give the senior advisory committee the latitude to identify their space needs, reviewing the priority list to make sure that it still makes sense and that facilities are included. He felt that the Council needs to make a positive statement that that here needs to be opportunities for additional senior programming. The Council could return to the senior advisory committee advising them that the Council is interested in providing them with additional programming opportunities but that it wants to hear from the Committee as to what they believe the priorities should be. This evening, it is the Council's charge to confirm that it wants the nutrition program at the Center. He felt that incorporating the nutrition program at the Center is the right thing to do. He said that the multi purpose room, as designed, is slightly larger than the existing one and that it could comfortably fit 80 individuals with round tables. He felt that that these are the issues that the senior advisory committee can address with the design team as the City enters into the next phase. He recommended that the Council provide an opportunity for the committee to go through programming and site review of the indoor recreation center, confirming that the senior nutrition program would be included within the center. He recommended that the same process apply to the Youth Advisory Committee.

Council Member Tate said that he sees the vitality of the center being for the seniors to spend the day, a portion of the day or to have lunch. Therefore, it would be natural to site the nutrition program at the center as this is where the seniors would spend their time. He understands that the City needs to meet budget. He felt that this is a youth and senior center and not a gymnasium/workout center. However, you have to have these facilities to help pay for the cost of the facility. As these have been incorporated into the design, the remaining space has to be split between the youths and the seniors in order to make it work.

Council Member Sellers felt that it would be likely that the seniors and youth would use the facility a lot more if the center includes an auditorium, gymnasium, and an aerobic/fitness room.

Council Member Tate indicated that the staff report states that the seniors would be charged for the aerobics classes, noting that the seniors are receiving free aerobics classes at this time. He felt that the Council needs to look at programming issues and whether the seniors should be charged for programmed activities.

Mayor Kennedy noted that Council Member Sellers recommended that the programming be initiated by the senior advisory committee. He expressed concern that this would be creating a false expectation that the committee would come up with a list of programming items and that the City would be able to fund them.

Council Member Sellers stated that the Council has not made a positive statement that it is interested in seeing an expansion of programming opportunities. He recommended that the senior advisory committee prioritize their programming needs. He felt that there are opportunities that exist in the community such as the community and cultural center, acknowledging that there are minimal costs associated with programming. He felt that making a declaration that the Council believes that there should be more programming opportunities but that the Council is under a strict budget.

Council Member Tate said that it should be acknowledged that there will be opportunities for expansion, especially with the multi purpose room. He recommended that the multi purpose room be laid out in such a manner that allows opportunity for expansion.

Ms. Spier informed the Council that the Friendly Inn consists of 1,900 square feet and that it was able to accommodate up to 100 individuals. She said that the same configuration could be applied to the 2,000 square foot multi purpose room. She felt that the indoor recreation center can accommodate the current user numbers associated with the Friendly Inn.

**Action:**        *Council Member Tate made a motion, seconded by Council Member Sellers to incorporate the senior nutrition program at the Indoor Recreation Center.*

Council Member Carr stated that the philosophy on how the City would address seniors and senior programming was raised. He noted that a lot has not been said about this. As the subcommittee goes back to the Senior Advisory Committee, the City can try to answer questions such as what drives senior programming. He noted that the senior nutrition program drives senior programming today. If the nutrition program was not located at the Friendly Inn, he did not believe that the seniors would congregate at the Friendly Inn. He stated that this is an important question. He felt that the City needs to determine what drives senior programming. If the nutrition program was not the central attraction to senior programming for the future of Morgan Hill, he felt that the space could be utilized in a much better way other than as a senior nutrition program. He noted that the staff report did not provide a recommendation regarding the nutrition program but did comment that it was staff's impression that the senior areas were being designed for the main purpose of nutrition services in lieu of other senior programming possibilities. He did not know if this was a positive or negative statement. He stated that he liked the direction that was being suggested by Council Member Sellers and that it was his hope that the Council could obtain answers.

Ms. Spier said that the statement she was trying to relay is that the programming seen today is the programming that will be moved to the indoor recreation center regarding the senior wing. She noted that the Council has not broached other subjects such as water aerobics or the gymnasium which would be fee based. She stated that the programming seen today would be driving the programming at the indoor recreation center.

Council Member Carr felt that the Council needs to answer the same questions for the youth side as well (e.g., what will drive the programming, what will attract the youth to utilize the center). He felt that the sooner the Council can engage on these discussions the better.

Mayor Pro Tempore Chang stated that a few years ago, she and Mayor Kennedy visited the Cupertino senior center. She stated that this center was what inspired the City's indoor recreation center. She noted that the Cupertino senior center did not include the nutrition program. Their senior center was designed for a different group of people and that this was what she would like to see developed. She felt that the Council should keep some options open. She recommended that the nutrition program be retained at the Friendly Inn to allow different sets of programming at the center as there are two different audiences.

Mayor Kennedy suggested that the City build the capability for a nutrition program at the new indoor recreation center but leave it temporarily at the Friendly Inn, even after the center is completed. This would result in designing the center for other senior programs. He felt that the Council was allowing the nutrition program drive the center's design. He did not know whether it was good to have the nutrition program be the driving force for the design of the center. He felt that it should be driven by the bulk of the programs that the seniors really want to see.

Council Member Sellers said that in designing the indoor recreation center space it is not reasonable to expect that the exact programs in place today would be in place 25 years from now. He felt that the design team have kept this in mind throughout the design process. He stated that the design would still include a kitchen and multi purpose room. He felt that there may be some minor alterations to the space that should be reviewed by the senior advisory committee. He felt that his motion incorporates flexibility.

Mayor Kennedy felt that it was important to include, as part of the motion, that the Council supports funding to the extent that it is able to expand the senior programs over and beyond the nutrition program. He stated that he would support the motion with the understanding that the indoor recreation center would be designed with flexibility in mind and with expansion capabilities in order to add programs, as needed.

Council Member Sellers said that the budget and space issue being faced with the kitchen is that there has to be dedicated facilities for the senior nutrition program. He said that this is a harder issue to resolve with the senior nutrition center at the indoor recreation center. If the nutrition center is not relocated to the center, you would not need to change the design of the kitchen. In response to Mayor Kennedy's question, he indicated that staff has pushed back to the County the request to limit the amount of dedicated space needed for the nutrition program.

Council Member Carr felt that programming space would be the same regardless of whether the nutrition program was incorporated at the center or whether it was designed as a community use kitchen.

Council Member Sellers felt that the senior nutrition center should be at the indoor recreation center because the seniors may want to be active before and/or after they have lunch.

Council Member Tate said that there is flexibility in using the multi purpose room except during the time the nutrition program is taking place. He noted that the multi purpose room is subdividable and that other uses can take place in the multi purpose room. He felt that the motion would lock in the kitchen more than it would the multi purpose room space.

Mayor Pro Tempore Chang stated that she would not object to programming the space, designing an identical kitchen. However, program-wise, she was not quite there yet.

Ms. Spier indicated that there is a space issue. If the City makes a determination that the nutrition site is to remain at the Friendly Inn, substantial improvements would need to be made to that facility. The Council would need to find monies to continue the nutrition program at the Friendly Inn. There is also a question of how the kitchen is to be laid out for general use.

Mayor Kennedy called for the question.

**Vote:**            *The motion carried 3-2 with Council Member Carr and Mayor Pro Tempore Chang voting no.*

**Action:**            *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **agreed** to try and develop the programming for senior and youth activities, determining the costs associated with the programming for future Council evaluation.*

**Action:**            *On a motion by Council Member Sellers, and seconded by Council Member Carr, the City Council unanimously (5-0) **agreed to extend** the meeting time to 11:30 p.m.*

## ***City Council and Redevelopment Agency Action***

**Action:**            *It was the consensus of the City Council to **consider** agenda item 30 at this time.*

### **30. DOWNTOWN REQUEST FOR CONCEPTS PROCESS**

Director of Business Assistance and Housing Services Toy presented the staff report. He indicated that staff has a supplemental proposal regarding Jerry DiSalvo's house located on Monterey Road that deals with the creation of a Morgan Hill Art Guild and Gallery. He informed the Council/Agency Board that a memorandum from the Economic Development Subcommittee has been distributed this evening offering their recommendation of how to proceed with this proposal.

Council/Agency Member Carr stated that at the last Council meeting, the Economic Development Subcommittee stated that it would return with quick hitters and proposals categorized in an area that requires additional follow up. He said that the interest is being placed on quick hitter proposals as the other proposals would require additional follow up. He noted that the art gallery concept is listed under the quick hitter proposals, utilizing the Downtown Association.

Council/Agency Member Tate clarified that the subcommittee would like to look at the DiSalvo proposal through the Downtown Association and that the City would not get directly involved with the business itself.

Mr. Toy said that staff is requesting that the Council/Agency Board give the Executive Director the authority to go ahead and contract with the Morgan Hill Downtown Association in an amount not to exceed \$25,000. This amount would allow staff to proceed with the implementation of an “art experience” concept in the downtown should the Council so direct.

Mayor/Chairman Kennedy opened the floor to public comment.

Rocke Garcia, owner of the Sunsweet property, indicated that he has served on many of the committees relating to the downtown. He felt that the Granada Theater is a key to the downtown. He was hopeful that the City and the property owner could work out an agreement to bring the theaters to the downtown. He stated that he has had an excellent meeting with staff and that he has brought on board a team of individuals to propose a public art project at Third and Depot Streets. He said that the project is moving along and that he would like to continue having excellent meetings with staff. He indicated that this would be a three step project with the main concern of meeting the timing for the next Measure P competition.

Diane Dasovic informed the Council/Agency Board that her family owns four adjacent lots on the north side of East Thirst Street. She stated that as long time residents of this community, the family is excited about the transformation that is taking place in the downtown and looking toward the opportunity of being a part of this historical undertaking. The family is looking to various departments and agencies for guidance and assistance to help long time landowners reach the goals of the new plan. She indicated that the family received a letter today informing them about tonight’s meeting. The family is surprised to see that their project is classified as a quick hitter. She stated that the family is confused about the RFC and classification process. She said that the family was sent a letter by the Redevelopment Agency on September 8, 2003 indicating that the City would be meeting with each RFC applicant to obtain more information about each project. She indicated that her family was never contacted. She felt that the point of the family’s letter was missed and that the letter should not have been classified as an infrastructure issue. She did not believe that the family’s proposal is that of a quick hitter and that the recommended action was not applicable as it does not address the concerns raised in the RFC response letter. She clarified that the letter outlined why the family was not able to put together a proposal with the guidelines that the RFC process requested in a short amount of time. The family also reviewed the other RFCs submitted and noted that others did not follow the guidelines. However, these proposals were pushed forward and were allowed to continue while the family’s proposal is being dismissed.

Council/Agency Member Tate clarified that the subcommittee did not state that they would dismiss this proposal. However, if the quick hitters could not proceed quickly, they were going to be pushed back into other categories.

Mr. Toy stated that it is being proposed to resolve flood control parking issues first. If the family is to develop a project in the future, the family wants to make sure that there is an opportunity to have set aside funding for future residential/commercial conversions. He said that there may be a possibility of creating a commercial rehab program that could meet their needs. He noted that the Council recently



amended City ordinances to provide incentives/remove barriers for residential/commercial conversions such as eliminating impact fees and fire sprinkler requirements. He indicated that the economic subcommittee is going through the process and did not mean to speak to everyone, clarifying that it is the intent to speak with everyone at some point in time. He stated that the subcommittee can speak with the family. If they are not satisfied with discussions, they can be brought back into the process.

Ms. Dasovic indicated that she did not believe that her concern was addressed and that she doubts that the recommended action applies to the family or addresses their concerns. She stated that the family has a lot of questions about this process as well as the downtown plan. She requested that the Council/Agency Board refer the family to someone who can answer questions.

Council/Agency Member Tate clarified that the subcommittee has not met with any applicants as the subcommittee was trying to get the proposals categorized and proceed with the next course of action which is talking to the applicants. It was the subcommittee's belief that it had some programs that could address a part of their proposal, noting that the family did not have a specific proposal but would like to develop one. The subcommittee felt that there may be some assistance that could address some of their needs short term. He said that the subcommittee will need to talk to the family to find out more details about their proposal.

Council/Agency Member Carr said that one thing to keep in mind in this process is that it was designed with flexibility in mind. He stated that the City is trying to proceed with some proposals quickly, applying existing programs so that there is the creation of flexibility. He said that it was the idea to get these two categories established in order to identify priorities for staff in meeting with property owners, specifically quick hitters and that the others would require additional time to gather information. He felt that this was a proposal that the subcommittee/staff needs to sit down and discuss with the property owners. The City could identify the things that have already taken place that can be beneficial and identify items that would be needed in the future. He felt that staff and/or the subcommittee can figure out where their proposal would fall following discussions.

Council/Agency Member Sellers recommended that for this particular project, staff and the subcommittee sit down and meet with family members as their properties are unique to the downtown, noting that family members participated in the downtown plan process. He felt that there are unique attributes not only with these properties and how they relate to the downtown but their significance. He recommended that discussions about the long term plans for the properties be discussed. He requested that the subcommittee and staff meet with the property owners.

**Action:** *It was the consensus of the Council/Agency Board to **direct** that the economic subcommittee and staff meet with the Dasovic family members to discuss their proposal.*

Council/Agency Member Tate recommended that this project be moved to category 2, the information gathering category as it is obvious that the family is not looking for any of the quick hitter programs.

Council/Agency Member Sellers stated his support of the art guild and gallery concept as conceived. He said that there are specific items that can help expedite this proposal, specifically that it has to be in place within 60 days. He noted that the Downtown Association will be meeting next Tuesday and

recommended that staff make sure that this is included in their agenda for discussion as this is a timely project.

Council/Agency Member Carr stated that staff and the subcommittee would meet as soon as possible with the Dasovic family members. He also noted that Mr. Garcia mentioned that the Granada Theater is of great importance. The subcommittee agrees that the Granada Theater is important and that it is trying to schedule a meeting with the owners of the theater to discuss what is taking place.

**Action:**        *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Tate, the Council/Agency Board unanimously (5-0) **Approved** the Categorization of Proposals, as outlined in the changes presented this evening.*

**Action:**        *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Tate, the Council/Agency Board unanimously (5-0) **Directed** Staff to Continue with the Process.*

## ***City Council Action***

### **26.    DEVELOPMENT AGREEMENT WITH MORGAN HILL LAND**

Director of Business Assistance and Housing Services Toy presented the staff report.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-1 vote with Mayor Pro Tempore Chang voting no, **Authorized** the City Manager to do Everything Necessary and Appropriate to Execute a Development Agreement with Morgan Hill Land, L.L.C.; Including Making Minor Modifications to the Agreement, Subject to Review by the City Attorney.*

### **28.    RESIGNATION OF A LIBRARY COMMISSIONER**

Council Member Tate said that it would be his recommendation to try to get the Library Commission back down to seven members. Therefore, he did not recommend a replacement, noting that future attrition would get the Library Commission down to seven members.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Accepted** John Boyne's Notice of Resignation from the Library Commission.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Directed** that the vacancy not be filled and that through attrition, get the library commission back down to a membership of seven.*

**29. REQUEST TO SEND LETTER TO THE SANTA CLARA COUNTY CITIES ASSOCIATION, RECOMMENDING CHANGES TO BYLAWS.**

Mayor Kennedy indicated that he distributed a draft copy of proposed changes to the Santa Clara County Cities Association. He stated that at the last Cities Association meeting, the Cities Association Board decided on a slate of officers, including two members who were not on the board of directors. He indicated that Mayor Pro Tempore Chang was one of the officers. He raised several questions with respect to the bylaws of the organization. The bylaws state that Board elections must take place in December and that it appears to him that the bylaws intended that the officers of the board should be members of the board. He indicated that the Cities Association disagreed with this position and took the vote that evening. He stated that the Cities Association agreed to amend the bylaws to reflect the actions they took. He indicated that what is before the Council is a draft of recommended amendments to the bylaws that he would like to send to the Cities Association. However, he recommended that the letter be sent after the election takes place in November and the new officers are put into place. He recommended that amendments be sent to the Cities Association in December or after the first of the year.

Council Member Tate felt that the City received a benefit of the election as the City would have two members serving on the Cities Association Board; one officer and a member. He felt that this results in a positive outcome for the City.

Mayor Kennedy said that another point is that it opens the door for other Council members to serve on the Cities Association's executive committee and not be a member of the Board.

Council Member Sellers felt that the City benefited from the outcome as the City has the extra representation. However, had it been another city, Morgan Hill would have less representation on the Cities Association. He said that the other issue he felt needed resolution is the fact the City of Morgan Hill does not have a policy that states that council members will inform fellow council members that they have been asked, in the capacity of a council member, to serve on a specific role. He recommended that the Council give thought to this in terms of council member roles. He did not know if this would be an issue that is addressed as part of the ethics subcommittee. He did not believe that anything was done inappropriately except that the City ended up in a situation where a council member received an appointment and that the other council members heard about it after the fact. He felt that for future councils it would be helpful to have some process in place to review future appointments.

Mayor Pro Tempore Chang thanked Mayor Kennedy for congratulating her on this appointment. She stated that she did not ask for the appointment but received a phone call from the president of the Board asking if she would be interested in serving on the board. She advised the president of the Board that she was not a member of the Board who then indicated that it was not a problem as she was not a member of the board and is serving as Board president. She said that this was a situation where she did not know how to handle the nomination and attempted to take a different approach. She felt that there are things that need to be changed. She stated that she would like to form a united front with Mayor Kennedy.

Council Member Sellers inquired whether it would be appropriate to have two signers on the letter.

Mayor Kennedy stated that the appointment had nothing to do with Mayor Pro Tempore Chang's qualification but felt that the process was wrong as it violated the bylaws. Also, it was inconsistent with policies that have been adopted by the Council in terms of outside agency appointments. He felt that the net result is that the decision that the Cities Association made was to allow non members of the board to serve as officers. This expands the size of the Association, acknowledging that the City of Morgan Hill ended up with two representatives as a good net result. He felt that some members of the board unfortunately took it as a lack of support for Mayor Pro Tempore Chang. He stated that this was not the intent. He recommended that Mayor Pro Tempore Chang review his proposed modifications to the Cities Association, incorporating any modifications she deems would be appropriate to make. He stated that he would suggest bringing the proposed modifications back to the Council.

Mayor Pro Tempore Chang agreed that there are items in the bylaws that need to be clarified. She stated that she would like to review the proposed amendments and work with Mayor Kennedy toward recommended changes to the bylaws.

**Action:**        **No action taken.** *Recommended changes to the Santa Clara Cities Association bylaws to return to the City Council.*

#### **FUTURE COUNCIL-INITIATED AGENDA ITEMS**

Programming for Seniors and Youths (Mayor Kennedy)

#### **ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:43 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**